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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

#3

FILE: [redacted] Office: ATHENS, GREECE Date: APR 21 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed.

The applicant is a native and citizen of Lebanon who was found to be inadmissible to the United States under § 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a citizen of the United States and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his spouse and child.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. The decision of the district director was affirmed on appeal by the AAO. On motion to reopen and reconsider, counsel asserts that the AAO misinterpreted the documentation of certain facts relating to the claim that the applicant's wife is suffering extreme hardship. Counsel also points out new information, specifically, that the applicant's wife depends on public assistance and receives no support from her parents. In support of counsel's contentions, she submits a clinical interview report by a psychologist, a birth certificate for the applicant's son, and letters written by the applicant, his wife, and his mother in law.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The instant record indicates that the applicant entered the United States and was admitted as a visitor for business on June 10, 2000. He was authorized to remain for 30 days, but instead he stayed in the United States until August 8, 2001. He therefore accumulated unlawful presence from July 9, 2000 to August 8, 2001, a period of over one year. In applying for an immigrant visa, the applicant is seeking admission within 10 years of his 2001 departure from the United States. Consequently, the applicant is inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself or his child experiences upon deportation is irrelevant to § 212(a)(9)(B)(v) waiver proceedings. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel asserts that the applicant's spouse will suffer extreme hardship if she relocates to Lebanon in order to remain with the applicant. Counsel contends that the AAO erroneously found no documentation of the claim that mental health treatment is unavailable in Lebanon. Counsel points out that the applicant's wife stated that she could not adjust to life in Lebanon; therefore, the AAO should be able to "deduce" that the applicant's wife's condition cannot be treated in that country. There is no independent evidence on the record, however, in support of counsel's claim that the applicant was unable to comply with her medication regime in Lebanon. On motion, counsel has not provided any documentation that the applicant could not

obtain treatment or that her condition worsened in Lebanon. There is no evidence on the record that she would experience extreme hardship in Lebanon.

Counsel does not establish hardship to the applicant's spouse if she remains in the United States. Counsel asserts that the AAO incorrectly concluded that the applicant's wife suffered from PTSD prior to her separation from the applicant. The psychologist's report of November 30, 2002 includes the following statement: "[The applicant's wife's] current depression is due to 1) an untreated previous psychiatric condition (PTSD), and 2) the separation from her husband. It is therefore clear that the AAO was not in error in finding that the PTSD was a previously existing condition. On motion, counsel submits a letter from [redacted]D., a psychologist, dated February 7, 2004. Dr [redacted] writes that the applicant's wife is unable to prepare meals, cannot work, and is suffering from a marked increase in emotional distress, which Dr [redacted] attributes to the applicant's inadmissibility. Since the record contains no evidence that the applicant's wife has ever undergone a course of psychiatric treatment for PTSD, depression, or any other mental illness, other than showing that she was prescribed an anti-anxiety drug on one occasion at an emergency clinic, and was seen previously by Dr. [redacted] in relation to this same waiver application, the AAO has no documentation upon which to base any conclusions regarding her mental health. The applicant's wife's self-described symptoms do not provide sufficient evidence of the extent of her mental distress.

Counsel asserts that the applicant's wife cannot work and must rely on public assistance. The record fails to establish this contention. There is also no documentation regarding the applicant's employment or claimed inability to maintain employment in Lebanon. The record contains no documentation regarding the applicant's wife's financial situation, her employment efforts, or status as a disabled person. The AAO cannot determine that she suffers extreme hardship due to the applicant's inadmissibility.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife experiences anxiety and other difficulties as a result of separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 291 of the Act, 8 U.S.C. § 1361. Here,

the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will not be disturbed.

ORDER: The motion is granted. The previous AAO decision dismissing the appeal is affirmed.